THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

ADVISORY COMMITTEE REPORT

Submitted to the Minister of Justice

October 24, 2003

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104-00489/

We, the undersigned are pleased to present our report of the Freedom of Information and Protection of Privacy Act Advisory Committee

Keith Corcoran

Jim Meek

Susan C. Potts

William Wilson

Peter O'Brien, Chair

INTRODUCTION

The Advisory Committee on the *Freedom of Information and Protection of Privacy Act* has made recommendations to improve the *Act* in four areas:

- Fees and Frivolous and Vexatious Applications

The Committee has recommended a modest decrease in fees, in response to submissions from journalists, caucus offices and others. It also believes that a lower fee structure would align Nova Scotia more closely with other Canadian jurisdictions.

At the same time, the Committee believed that a more dramatic decrease in fees would result in an increase in incomprehensible and repetitious applications. Such applications are already numerous and costly; and they clog up the system. As a result, such applications both delay the processing of legitimate applications and undermine the purposes of the *Act*.

- The Power and Duties of the FOIPOP Review Office

The Committee has made several recommendations concerning the administration of the Review Office. The Committee's overall goals in this area included: giving the Review Office more power to investigate public bodies that do not comply with the terms of the act; providing the office more resources to mediate disputes when appropriate; and encouraging the Review Office to render detailed, written decisions in a manner that provides FOIPOP Administrators with clear guidance in processing future applications.

- Privacy Issues

The Committee has made recommendations to protect the privacy of electronic records and to protect the confidentiality of the records of third parties to FOIPOP applications.

The Committee strongly believed that issues of personal privacy will become increasingly important in Canadian society. However, it also felt that a fuller set of recommendations on this issue could not usefully be made before the federal privacy legislation comes into force in 2004. Even then, the provincial government must make a decision, at the executive level, about whether it will adopt the federal legislation, or develop its own policies. The Committee therefore recommended that the provincial government consider establishing, at a later date, a separate committee to more fully review privacy issues.

- Government and Legislation

The Committee has made a recommendation that the *Act* be changed to compel the Minister of Justice to report annually to the legislature on the administration of the *FOIPOP Act*. The Committee believed the minister should be fully accountable to the legislature for the administration of the *Act*.

In addition, the Committee has recommended that the government move quickly, in the spirit of the *Act*, to implement a policy of routine access to an identified set of public records as a matter of course.

Finally, the Committee wanted to highlight its recommendations that *FOIPOP* Administrators be given the opportunity to upgrade their education and improve their skills. The Committee acknowledged the steps taken to make this service more professional. It also felt further progress should be made, as *FOIPOP* Administrators play a crucial central role in making the government accountable to the public.

SCOPE OF REVIEW AND COMMITTEE COMMENTS

The Minister of Justice appointed the Advisory Committee in November 2002 to conduct a review of the *Freedom of Information and Protection of Privacy Act* (FOIPOP) as required by Section 50 of the *Act*.

The Committee[c] represents more than 125 years of experience in journalism, law, FOIPOP administration and public advocacy. Its members came to understand the legislation from the points of view of journalists, political parties, private citizens and other applicants. The Committee also heard the views of third parties whose records are subject to applications; of the individuals who process those applications (FOIPOP Administrators); and of the individual who reviews some of those decisions, the Review Officer. The Committee solicited the views of the public through newspaper advertisements and letters directed to demonstrated interested parties[s]. The Committee also convened public hearings and received written submissions[s]. This report is the result of public consultations, committee deliberations and written submissions of interested citizens and organizations. The Committee considered all recommendations presented to it. This report presents those recommendations that it believes will improve the *Act* and its administration.

The Committee's mandate was to conduct a "comprehensive review of the *Act* within one year of its appointment and to provide a written report to the Governor in Council by March 31, 2004 including recommendations for amendment to the legislation and any additional designation of "public bodies" under Section 49(1)(f) of the *Act*. In conducting its review and in making recommendations, the Committee shall:

1. consider Nova Scotia's experience with the *Act* in accordance with its stated purpose and any need for improvement to the legislation;

2. Identify and make recommendations on issues of interpretation with the current legislation;

3. Specifically review the adequacy of the privacy protection provisions of the legislation;

4. Examine recent legislative change and/or recommendations for legislative change in other jurisdictions in Canada and consider their possible application to Nova Scotia;

5. Publicly invite submissions."

At the outset the Committee agreed to be as transparent as possible in its operations. To that end, a web site was established within the Department of Justice web site at

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[1]See Appendix A

[2]See Appendix B

[3]See Appendix C

(www.gov.ns.ca/just/advcom). All submissions, Committee minutes and the proposed budget were posted on this site.

The Committee agreed that dissenting opinions would be presented in the body of the Report.

The Committee advertised in all six daily newspapers in the province[e]. The Committee received 21 submissions[s] and conducted three days of public hearings in Halifax[x]. The Committee had anticipated a need to travel to other locations in the province to receive submissions. However, only two presenters came from outside the Halifax Regional Municipality. They were asked to travel to Halifax to meet with the Committee. Both indicated their willingness to travel. Their expenses were reimbursed.

The representations received by the Committee emphasized that the application process be conducted fairly; that responses be made promptly; that the cost to file an application be reasonable; that requests for a fee waiver be administered in an open fashion; and that original documents be returned to applicants promptly upon request.

The Committee wishes to express its appreciation to all who presented oral or written submissions. Without their input the review would have been very difficult. The Committee was concerned with the apparent limited interest in the privacy aspects of the legislation. That may be explained by the fact that the full implementation of the federal legislation will not occur until January 1, 2004. Therefore its impact cannot be fully anticipated at the time of this Review.

RECOMMENDATIONS

The Committee presents its recommendations under four separate headings:

- Fees and Frivolous and Vexatious Applications
- *FOIPOP* Review Office
- Privacy
- Government and Legislative

The Committee believes that these recommendations will improve the effectiveness of the legislation and its administration.

FEES AND FRIVOLOUS AND VEXATIOUS APPLICATIONS

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[4]See Appendix D

[5]See Appendix E

[6]See Appendix F

Most representations to the Review Committee raised the issue of the current fee structure. The Committee considered these representations together with the reasons, given by Government, for the recent increases. The stated reason was to slow down the number of frivolous and vexatious applications that were undermining the process.

Data from the past year suggests that, while applications were down, frivolous or vexatious requests were not. These requests remain in the ten per cent range. The increase in application and processing fees and the requirement to pay for the first two hours of review have not been effective.

The Committee has examined various fee structures from other Canadian jurisdictions. The results are shown in the following table.

Fees -Other Jurisdictions

Province	Application Fee	Processing Fee	Appeal Fee
Alberta	$25.00 ($50 if the request is a continuing one)	$27.00 per hour (if estimate over $150)	no appeal fee
British Columbia	$0.00	$30 per hour (first 3 hours free)	$0.00
Canada	$5.00	$10 per hour (first 5 hours free)	$0.00
Manitoba	$0.00	$30 per hour (first 2 hours free)	$0.00
New Brunswick	$5.00	no processing fee other than photocopying	$0.00
Newfoundland	$5.00	$15 per hour (first 2 hours free)	appeal to court only*
Ontario	$5.00	$30 per hour (no free hours)	$25.00
P.E.I.	$5.00	$20 per hour (first 2 hours free)	$0.00
Quebec	$0.00	Only photocopying fees and fees for specific info	$0.00
Saskatchewan	$0.00 (except Municipal Bodies $20)	$30 per hour	$0.00

The Committee also considered the revenue from applications and the fee for review time and concluded that there was no relationship between the 2002 revenues of $15,961.10 and the estimated 2002 cost for providing information of $952,000. A departmental breakdown follows:

Department	Cost
*N.S. Department of Justice	$169,000
*N.S. Department of Environment and Labour	$110,000
Health	$ 71,000
*Other Departments	$390,000
Total Government Departments	**$740,000**
**Review Office	$212,000
Total Costs	**$952,000**

Midway through the 2003 calendar year, government departments had received 355 FOIPOP applications which consisted of 3 Academia, 75 Company/Business, 28 Media, 17 Other, 57 Political, 173 Private Individuals, and 2 Public Interest. As compared to the first two quarters of 2002 and 2001 the number of applications had declined[d].

Individuals applying for their own personal information do not pay an Application Fee nor do they pay Processing Fees.

The Committee deliberated on all representations made on this issue, fees in other Canadian jurisdictions as well as the overall cost of administering the *Act*. As a result, the Committee makes the following recommendation:

The Application Fee remain at $25 but that fees be eliminated for the first two hours of processing time and for any subsequent review by the Review Officer. All other fees are to remain the same.

If adopted, this recommendation could reduce application costs by as much as $85.00 (the $60.00 cost for the first two hours of processing the application as well as the $25.00 Review Fee)

Committee member Keith Corcoran dissented from this recommendation and stated: "This dissenting view stems from my opinion that the entire application process be affordable. Keeping the application fee at $25 stops people at the door and does not keep the process at a

[7]See Appendix G

bargain price." Mr. Corcoran supports the reinstatement of the two free hours of processing time and the elimination of the review fee, and the reinstatement of the hourly search fee of $20.

To ensure that frivolous and vexatious requests do not undermine the process the Committee makes the following recommendation:

The *Act* be amended to permit Administrators to decline to process an application they deem to be repetitious or incomprehensible. The Administrator must advise the applicant of the decision, in writing, within 30 days of receipt of the application. The right of the applicant to have the decision reviewed by the Review Officer should remain.

The Committee believes that this approach may decrease the number of inappropriate applications. It also believes that limiting the grounds for refusal to repetitious and incomprehensible will protect the rights of legitimate applicants.

The Committee considered recommending the power to refuse to process an application be given to the Review Officer. The Committee decided that to do so would undermine the objectivity of the Review Officer and deny the applicants an independent review.

Committee member Keith Corcoran dissented from this recommendation and stated: "This dissenting view is based on the belief that such an inclusion in the Act is unnecessary as a small percentage of applications are responsible for these types of requests. The Act does not require further restrictions."

FOIPOP REVIEW OFFICE

Representations were made that the Review Office continue its current practice of allowing extensions for complex or multiple applications. The Committee makes the following recommendation:

The Review Office continue its current practice of flexibility in granting extensions of time for complex and multiple applications.

The mediation process appears to reduce the number of reviews which go to the Review Officer and works well in resolving differences when the parties are in agreement with the process. The Committee agrees that mediation is an appropriate option to expedite the review process. The Committee makes the following recommendations:

The Review Office be provided with sufficient support to freely offer mediation.

All staff of the Review Office be administered an oath of confidentiality.

A Section be added to the *Act* to prohibit the Review Officer and staff from disclosing any information that comes to their knowledge in the performance of their duties.

The Committee believes the requirement for the administration of an oath and the prohibition against disclosing information will meet the objections raised for refusing mediation based on a concern about confidentiality.

It has been the practice of the Review Office to provide written decisions in response to requests for review. This practice should continue as it provides guidance to applicants and to departments in the administration of the *Act*. In addition, reasons for the decision should be fully explained. The Committee makes the following recommendation:

The Review Officer provide in each review full reasons for the decision.

The Review Officer advised that he was concerned that the office has no remedy if a public body refuses to provide a complete set of records to the Review Office in response to a review request. The Committee makes the following recommendation:

The Review Officer be given the power, where there are reasonable grounds to believe a public body has not provided the Review Office with all responsive records, to investigate and audit the public body.

The Committee was advised that there is some confusion among Administrators, applicants and third parties as to when notice is required to be given when third party records are responsive to an application request. The Committee makes the following recommendation:

Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to clarify the notice provision. The amendment would provide that notice to a third party is mandatory if the records relevant to a *FOIPOP* application might affect the interests or invade the privacy of that third party except in cases where giving such notice would be impracticable.

The Committee also makes the following recommendation:

Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add that failure of a third party to respond to a request for consent to release records be deemed a refusal to consent to the release of the records.

Representations to the Committee suggested that public education could improve the usage of the legislation. The Review Officer also indicated a desire to participate in this process. The Committee makes the following recommendation:

The Review Officer's mandate should include participation in public education to facilitate improved use of the legislation.

The Committee agrees with the Review Officer's recommendation to make the Review Process more specific and makes the following recommendation:

The *Act* specify the authority of the Review Officer to establish procedures regarding the review process and to provide such procedures to applicants, Administrators and third parties.

The Committee agrees with the Review Officer's recommendation that Section 39 be amended and makes the following recommendation:

Section 39 of the *Act* be amended to specify the authority of the Review Officer to make recommendations on whether claims for exemption have been met, discretion was appropriately exercised (e.g. disclosure or fee waive decision) or other related matters.

Some submissions questioned the past performance record of at least one *FOIPOP* Administrator, while indicating that the professionalism of the service has improved overall. The Committee encourages the government to continue to enhance the professionalism of the Administrators and makes the following recommendations:

Continuing education and upgrading be provided to all *FOIPOP* Administrators on a regular basis, utilizing conferences and educational programs across the country.

The government should attempt to incorporate best practices from other jurisdictions in its own educational programs.

FOIPOP Administrators indicated in their submission that it was difficult to ensure privacy in replying to some requests for information. The Committee makes the following recommendation:

Section 7(2)(c) be amended to include Sections 18 and 20. This would broaden the ability of a public body, when responding to an applicant, to neither confirm nor deny the existence of a record if issues of personal privacy or safety are involved.

FOIPOP Administrators advised that response times could be speeded up if they were allowed to respond to applications in a variety of ways. The Committee makes the following recommendation:

A provision be added to the *Act* to give FOIPOP Administrators the ability to create a record in a format requested by the applicant if it would be reasonable to do so.

To ensure that third parties are contacted and to ensure that other levels of government have sufficient time to respond to referrals, the Committee makes the following recommendation:

Section 9(1)(c) be amended to allow an extension for further consultation with another level of government listed in Section 12.

Several submissions, including one from a municipal government, indicated that multiple applications from one source may make it difficult to respond in a reasonable time frame. The Committee makes the following recommendation:

Section 9(1)(c) be amended to allow for time extensions to be granted in situations of multiple concurrent requests from a single source, on condition that the extension is first authorized by the Review Office.

From time to time applications are not directed accurately. While this is addressed within government, the Committee makes the following recommendation:
Section 10 be amended to allow for transfers of FOIPOP requests between public bodies and municipalities.

PRIVACY

The Committee was mandated to review the privacy aspects of the legislation. Therefore, it specifically solicited submissions in this area but received little feedback. As a result, the recommendations on privacy are limited in scope. In the Committee's view, the issues surrounding privacy may emerge more clearly once the federal government implements its new privacy legislation in 2004.. The Committee believes that the provincial government may need to address this issue fully in future, after the implementation of federal legislation. According, the Committee makes the following recommendation:

The Government of Nova Scotia consider establishing a Committee to specifically review pertinent aspects of personal and business privacy once the federal legislation is implemented and provincial issues become more obvious.

The Committee has also been presented with a number of recommendations and suggestions concerning privacy. While the current *Act* provides some authority in this area the Review Officer requested clearly legislated authority to investigate privacy complaints and to issue reports with appropriate recommendations.

Having considered the issue in its broader context, including the new federal legislation, the Committee makes the following recommendation:

The Government consider appointing a separate, independent arbitrator with authority to investigate privacy complaints outside the scope of the *FOIPOP Act.*

The Committee believes that there is lack of clarity under the *Act* regarding notification of third parties to an application. The Committee believes that this issue should be addressed to protect

the privacy of companies from the inappropriate release of confidential information. The Committee makes the following recommendation:

Section 22(lA)(b) of the *Act* be amended to require notice be given to a third party corporation in the Province in the manner set out in Section 14 of the regulations.

A number of submissions identified the need to protect the integrity of the interview process in hiring or promoting individuals. Recognizing the need to balance the rights of employers, employees and job applicants, the Committee makes the following recommendation:

A provision be added to the *Act* that exempts information used to determine eligibility for employment or promotion, provided a summary of the performance of an individual as a candidate is given to that individual if requested.

The Committee believes the privacy of the personal information of deceased individuals and minors should be protected. The Committee believes that the executor of the estate of the deceased or the next of kin should considered a third party in place of the deceased for the purposes of applications which seek records which might affect the interests or invade the privacy of the deceased. Therefore the Committee makes the following recommendation:

Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add a section to protect the rights of the survivors of a deceased person.

The Committee believes the executor - or in the absence of an executor, the next of kin - should have the same right of access to the records of the deceased that the deceased would have if he/she were alive. Therefore the Committee makes the following recommendation:

The *Freedom of Information and Protection of Privacy Act* be amended, adding a Section to provide the Executor of the estate - or the next of kin - the same right of access to the deceased's personal records that deceased would have if he were living.

The Committee believes the privacy of the personal information of minors should be protected. The Committee believes that the custodial parent or guardian should be considered a third party in place of the minor child for the purposes of applications which seek records which might affect the interests or invade the privacy of the child. Therefore the Committee makes the following recommendation:

Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add a section to protect the rights of a minor child.

The Committee believes the custodial parent or guardian of a minor child should have the same right of access to the records of the minor child that the minor child would have at the age of majority. Therefore the Committee makes the following recommendation:

The *Freedom of Information and Protection of Privacy Act* be amended, adding a Section to provide custodial parents or guardians the same right of access to the personal records of a minor child that the child would have at the age of majority.

A number of suggestions were made to the Committee regarding the privacy of electronic mail (e-mail) addresses, computer hard drives and facsimile (fax) numbers. The Committee makes the following recommendation:

The definition of "personal information" in Section 3(1) should be extended to cover an individual's fax number, e-mail address and computer hard drives.

FOIPOP Administrators say they are often faced with a difficult decision regarding the possible release of confidential records from another level of government. The *Act* currently requires that records not be released if they can be "reasonably expected to reveal information." To clarify the intention of the *Act* in regards to the protection of such records, the Committee makes the following recommendation:

Section 12 be revised to reflect that such records should be exempted, if they would reveal information provided, in confidence, from another government.

Because of the nature of the records existing about individuals in many quarters, the Committee believes that individuals should have the right to place their opinion or view of an issue that may exist in a record but should not have the right to change that information. The Committee makes the following recommendation:

Section 25 (Right of Correction of Personal Information) be amended to specifically exclude the right of correction of personal or professional opinions, but require any contrary opinion to be placed on the file.

The Committee has been advised that some aspects of the *FOIPOP Act* do not fully capture the reality of certain peer review processes or their range in scope in the university community. The result is a limiting of the university's ability to provide adequate confidentiality protection to information providers. The Committee has also been advised that a definition of the word "tenure" would also provide clarity to the *Act*. Therefore the Committee makes the following recommendation:

Section 19C be amended to include reappointment as a faculty member and appointment or reappointment as an academic administrator of a university.

The term "tenure" be defined in the *Act* to include appointments of an indefinite term.

The Committee has also been advised that in the course of operation universities are, at times, requested to share personal information with other universities to facilitate reduced costs through

resource sharing. The legislation, as it presently exists, does not provide for such sharing. The Committee in recognizing this challenge makes the following recommendation:

Section 27 be amended by adding a provision which permits universities to disclose personal information where the information is necessary for the operation of shared programs, shared activities or shared resources.

GOVERNMENT AND LEGISLATIVE RECOMMENDATIONS

When the Committee was established it was advised that the government was working on a policy to provide routine access to certain government records. Such routine disclosure is surely required in the name of public access to government records. It is the Committee's understanding that this work is nearing completion and when implemented should make more information public. The Committee makes the following recommendation:

The government complete its work on routine access to records and that routine access be implemented as quickly as possible.

Further, the Committee makes the following recommendation:

That the access list be reviewed on a regular basis and updated.

The Committee believes that the Government and its agencies, boards and commissions should demonstrate more openness and accountability and makes the following recommendation:

Agencies, boards and commissions should adopt the routine access policy described above.

The Committee believes that it is better to have all agencies, boards and commissions automatically subject to the *Act*. Therefore any newly established bodies should be automatically covered by the *Act*. The Committee makes the following recommendation:

All departments, boards, commissions and agencies of the Government of Nova Scotia should fall within the scope of the *Act*.

Municipalities should also be fully subject to the legislation. The Committee makes the following recommendation:

The definition of "public body" should be expanded to include municipalities for purposes of Section 9, 10, and 27 of the *Act*.

One of the issues raised in a number of submissions was the need for an annual report on the Administration of the *Act*. The report should include the number and type of applications, the number completed, the number refused and the number still in progress as well as the number reviewed, the results of the reviews, the number appealed and the results of those appeals. The

report should also show the cost of implementing the legislation on an annual basis and the revenues derived from application fees and from charges for extended reviews. As a result the Committee makes the following recommendation:

The *Act* be amended to require the Minister of Justice to provide an annual report on the *Freedom of Information and Protection of Privacy Act*. The report should be released within three months of the calendar year end.

The presentation from the *FOIPOP* Administrators made a number of housekeeping recommendations, the Committee agrees and makes the following recommendations:

Revise Section 9(2) to change "tell" the applicant to "notify the applicant in writing", or in an alternate format for persons with disabilities, where an extension is granted.

Revise Section 20(3)(i) to remove ".....and is to be used for mailing lists or solicitation purposes."

Revise Section 47 (1) by adding "uses" to "collects or discloses".

There were indications that the response time for requests to correct personal information was not clearly stated in the *Act*. The Committee makes the following recommendation:

Response time for requests to change personal information should be consistent with the *FOIPOP Act* application process.

The *FOIPOP* Administrators also stressed the need to place limits on the time period during which an applicant may request a review. The Committee makes the following recommendation:

The time period during which an applicant may request a review should be limited to 60 days with the possibility of an extension to 90 days with the consent of the Review Officer.

The Committee acknowledges that disclosure of some records of some government entities are subject to laws other than *FOIPOP*. This applies in particular to the records held concerning criminal prosecutions. Therefore the Committee in recognizing the intent and purpose of those laws makes the following recommendation:

Section 4 of the *Freedom of Information and Protection of Privacy Act* be amended to add that the *Act* does not apply to records relating to a prosecution if all proceedings have been completed, if the records sought would not have been subject to disclosure under the criminal law rules of disclosure during the proceeding.

The Committee believes that this legislation should be reviewed on a regular basis and recommends:

A review of the *Freedom of Information and Protection of Privacy Act* should be undertaken within five years of receipt of this report by the Governor in Council.

Appendix A
Committee Members and Position

The Appointees to the Committee were:

Mr. Keith Corcoran
Reporter/Photographer
The Bridgewater Bulletin

Mr. Jim Meek
Public Affairs Consultant
Meek Consulting Inc.

Mr. William Wilson, Q.C.
Executive Director Legal Services
NS Department of Justice

Ms Susan C. Potts
Senior Crown Attorney
FOIPOP Administrator
Public Prosecution Service

Mr. Peter O'Brien
Vice President, Atlantic Canada
Canadian Federation of Independent Business (Retired)

Appendix B
Letters Mailed to Solicit Comments

NOVA SCOTIA
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
ADVISORY COMMITTEE

7th Fl., 5151 Terminal Rd
Halifax, Nova Scotia
B3J 2L6

Phone: 902 424-2719
Fax: 902 428-0619

February 13, 2003

Dear Sir or Madam:

In late 2002 the N.S. Government appointed an advisory committee to review the *Freedom of Information and Protection of Privacy (FOIPOP) Act* and make recommendations for change. In particular the committee was charged with considering any additional designation of "public bodies" to be subject to the Act under clause 49(1)(f) of the legislation.

It is the committee's intention to encourage as many individuals and organizations as possible to provide their views on the legislation. As members of your organization may have had experience as applicants under FOIPOP Act, I would encourage you to provide us with the experience and/or views of your membership with respect to the legislation]

Submissions to the committee may be written, verbal, or both. If you do wish to make a verbal presentation to the committee, I would ask that you provide the committee with a brief summary of the points you raised in your presentation. This will allow us to ensure that we have captured the substance of the views provided in every instance.

If you wish to make a submission, I would ask that you notify me in writing or by e-mail by March 21, 2003 at either of the following addresses:

Mailing Address: Mr. Peter O'Brien, Chair
FOIPOP Review Committee
c/o Nova Scotia Department of Justice
5151 Terminal Road, P.O. Box 7
Halifax, N.S. B3J 2L6

E-mail: foiadvcm@gov.ns.ca

Thank you for your consideration, and we look forward to hearing from you in the near future.

Yours truly,

Peter O'Brien
Chair

The above letter was sent to the following organizations/individuals:

Mr. Patrick Moore
Communications Manager.
Canadian Community Newspapers Association (CCNA)
8 Market Street
Suite 300
Toronto, ON M5E 1M6

Dr. Sean Riley
Chair, CONSUP
Council of NS University Presidents
Suite 403
5657 Spring Garden Road
Halifax, NS B3J 3R4

Professor Wade MacLauchlan
Chair, AAU
Association of Atlantic Universities
Suite 403
5657 Spring Garden Road
Halifax, NS B3J 3R4

Mr. Rhéal Poirier
Secretary, APEF
Atlantic Provinces Education Foundation
PO Box 2044
Halifax, NS B3J 2Z1

Mr. Rick Clarke
President
NS Federation of Labour
Suite 225
3700 Kempt Road
Halifax, NS B3K 4X8

Mr. Paul Dowie
Chief Executive, NS Operations
Atlantic Blue Cross Care
7 Spectacle Lake Dr.
PO Box 2200
Dartmouth, NS B3J 3C6

Dr. Donald Bonang
Registrar
Provincial Dental Board of NS
1559 Brunswick Street
Suite 102
Halifax, NS B3J 2G1

Mr. Paul Schneidereit
CAJ National Executive
Canadian Association of Journalists
c/o Chronicle Herald/The Mail Star
1650 Argyle St., PO Box 610
Halifax, NS B3J 2T2

Dr. Cameron Little
Registrar
College of Physicians and Surgeons of NS
1559 Brunswick Street
Suite 200
Halifax, NS B3J 2G1

Mr. Brian Forbes
President
NS Teachers Union
3106 Dutch Village Road
Halifax, NS B3L 4L7

Mr. Frank Barteaux
Executive Director
NS School Boards Association
95 Victoria Road
Dartmouth, NS B3A 1V2

Ms Roxanna Smith
Chair
South Shore District Health Authority
90 Glen Allan Drive
Bridgewater, NS B4V 3S6

Mr. Ronald Horrocks
Chair
Southwest Nova District Health Authority
Site 1, PO Box 4
R.R. #1
Glenwood, NS B0W 1W0

Mr. David Logie
Chair
Annapolis Valley District Health Authority
PO Box 490, 121 Orchard St.
Berwick, NS B0P 1E0

Mr. Garry Pye
Chair
Colchester East Hants Health Authority
PO Box 1530
468 Prince Street
Truro, NS B2N 5V2

Mr. Bruce Saunders
Chair
Cumberland Health Authority
PO Box 302
Amherst, NS B4H 3X5

Mr. Harry Inder
Chair
Pictou Co. Health Authority
202 Washington Street
New Glasgow, NS B2H 3L8

Ms Colleen Cameron
Chair
Guysborough Antigonish Strait Health Authority
25 Bay Street
Antigonish, NS B2G 2G5

Mr. Norman Connors
Chair
Cape Breton District Health Authority
235 Townsend Street
NSPC Bldg., 2nd fl.
Sydney, NS B1P 5E7

Mr. Bruce McLaughlin
Chair
Capital District Health Authority
PO Box 913
Dartmouth, NS B2Y 3Z6

Ms Sarah Dennis
Chair
IWK Health Centre
1910 Bloomingdale Terr.
Halifax, NS B3H 4E5

Mr. Murray Brewster
President, CAJ
Canadian Association of Journalists
c/o Canadian Press
PO Box 37 Station M
Halifax, NS B3J 3E8

NOVA SCOTIA
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
ADVISORY COMMITTEE

7th Fl., 5151 Terminal Rd
Halifax, Nova Scotia
B3J 2L6

Phone: 902 424-2719
Fax: 902 428-0619

February 13, 2003

Dear Sir or Madam,

In late 2002 the N.S. Government appointed an advisory committee to review the *Freedom of Information and Protection of Privacy (FOIPOP) Act* and make recommendations for change. In particular the committee was charged with considering any additional designation of "public bodies" to be subject to the Act under clause 49(1)(f) of the legislation.

It is the committee's intention to encourage as many individuals and organizations as possible to provide their views on the legislation. I noted that your organization (or you) made a submission to the committee that reviewed the legislation and issued a report in 1996. I would encourage you to consider making a submission to the current committee to relate your experience with the legislation and/or offer your views on any changes.

Submissions to the committee may be written, verbal, or both. If you do wish to make a verbal presentation to the committee, I would ask that you provide the committee with a brief summary of the points you raised in your presentation. This will allow us to ensure that we have captured the substance of the views provided in every instance.

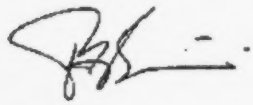
If you wish to make a submission, I would ask that you notify me in writing or by e-mail by March 21, 2003 at either of the following addresses:

Mailing Address: Mr. Peter O'Brien, Chair
FOIPOP Review Committee
c/o Nova Scotia Department of Justice
5151 Terminal Road, P.O. Box 7
Halifax, N.S. B3J 2L6

E-mail: foiadvcm@gov.ns.ca

Thank you for your consideration, and we look forward to hearing from you in the near future.

Yours truly,



Peter O'Brien
Chair

The above letter was sent to the following organizations/individuals:

Mr. Darrel Pink
Executive Director
NS Barristers Society
1645 Granville Street
Suite 1101
Halifax, NS B3J 1X3

Mr. Parker Barss Donham
8190 Kempt Head Road
Kempt Head, NS B1X 1R8

Mr. Darce Fardy
Review Officer
FOIPOP Act
PO Box 181
Halifax, NS B3J 2M4

Mr. Don Zwicker
President, UNSM
Union of NS Municipalities
1660 Hollis St.
Suite 901
Halifax, NS B3J 2M4

Mr. Peter Kelly
Mayor
Halifax Regional Municipality
PO Box 1749
1841 Argyle St.
Halifax, NS B3J 3A5

Mr Ian Glasgow
Chief Administrators Office
Municipality of East Hants
PO Box 190
Shubenacadie, NS B0N 2H0

Mr. Jim McMorran
President of the Board
Canadian Mental Health Association
63 King Street
Dartmouth, NS B2Y 2R7

Mr. Louis Digout
Chief Administrative Officer
Municipality of the County of Richmond
PO Box 120
Arichat, NS B0E 1A0

Ms Joan Jessome
President
NS Government Employees Union
100 Eileen Stubbs Avenue
Dartmouth, NS B3B 1Y6

Mr. John R. Dow
Executive Director
Provincial Health Council
1888 Brunswick Street, Suite 301
Halifax, NS B3J 3J8

Mr. Robert B. Short
124 Shore Drive
Bedford, NS B4A 2E1

Mr. A. Donald Smeltzer
39 Skeena Street
Dartmouth, NS B2W 1P7

Ms Mary Jess MacDonald
President
NS School Boards Association
95 Victoria Road
Dartmouth, NS B3A 1V2

Sheila Luker
School Board Member
North-Victoria District School Board
55 Brown St. Ext.
Sydney Mines, NS B1V 1G2

Mr. Thomas Parker
Director Records Management
NS Archives and Records Management
6016 University Avenue
Halifax, NS B3H 1W4

Appendix C
Submissions

All submissions are posted at the following URL address: www.gov.ns.ca/just/foi/advcm.htm

- Darce Fardy, Review Officer
- Follow - up letter, Darce Fardy, Review Officer
- Impact of FOIPOP Fee Increases in Nova Scotia, Darce Fardy, Review Officer
- August 2003 - Supplementary Submission, Darce Fardy, Review Officer
- Michel Samson, Liberal Justice Critic
- Debbie Kampen, Town of Trenton
- Paul Schneidereit, Canadian Association of Journalists
- Connie Brauer
- Dean Beeby, Canadian Press/Broadcast News
- Murray MacDonald
- Mary Bowen
- Karen Crombie, The Council of NS University Presidents
- Supplementary Submission, Karen Crombie, The Council of NS University Presidents
- Anthony Weagle
- Darrell Dexter, NDP Caucus Office
- Joint submission by: Victoria Rees, NS Barristers' Society; Cameron Little, College of Physicians and Surgeons of NS; Carolyn Moore, College of Registered Nurses of NS; Robert Coswill, Chartered Accountants of NS; and D.M. Bonang, Provincial Dental Board of NS
- Dale Dunlop, Walker Dunlop
- Joan Jessome, NS Government and General Employees Union
- Mark Butler, Ecology Action Centre
- D.M. Bonang, Provincial Dental Board of NS
- Nancy Milford, Capital District Health Authority
- George Sutherland, Michelin
- Nova Scotia FOIPOP Government Administrators
- Nova Scotia FOIPOP Government Administrators Supplementary Submission
- Kenzie MacKinnon, Bloomfield Neighbourhood Residents Association

Appendix D
Newspaper Advertisement and List of Daily Papers

Freedom of Information & Protection of Privacy Act Review Committee

Request for Submissions

An advisory committee established by the Nova Scotia Minister of Justice to conduct a review of the Freedom of Information and Protection of Privacy Act is now inviting written and/or oral submissions. Submissions may be made by individuals or organizations expressing any views about the legislation and any changes that should be considered. Those wishing to make a submission should notify Committee Chair Peter O'Brien in writing by March 21,2003:

Mr. Peter O'Brien, Chair
FOIPOP Review Committee
c/o Nova Scotia Department of Justice
PO Box 7, 5151 Terminal Road
Halifax, N.S. B3J 2L6

E-mail: foiadvcm@gov.ns.ca

If an individual wishes to appear before the committee, it should be communicated in the letter to the committee's chair. Unless otherwise requested, all written submissions will be posted publicly on the committee's location on the Nova Scotia Justice web site. Further information about the committee, its membership, and mandate may be obtained at www.gov.ns.ca/just/foi/advcm.htm or by calling 902-424-5585.

NOVA SCOTIA
Justice

Dailies:
Chronicle Herald/Mail Star
Sunday Daily News
Amherst Daily News
Cape Breton Post
Truro Daily News
New Glasgow Evening News

Appendix E
Dates and Attendees at Public Hearings

Friday, February 14, 2003

- 10:00 am - Review Officer, Darce Fardy

Thursday, May 8, 2003

- 9:00 a.m. - Liberal Caucus, Michel Samson, MLA
- 10:00 a.m.-Walker Dunlop, Dale Dunlop, Barrister & Solicitor
- 1:00 p.m.-Murray Ross MacDonald
- 2:00 p.m.-Capital District Health Authority, Nancy C. Milford, Barrister & Solicitor
- 3:00 p.m.-Anthony Weagle

Wednesday, May 14, 2003

- 9:00 a.m.-Dalhousie University and Council of Nova Scotia University Presidents, Karen Crombie, Barrister & Solicitor
- 10:00 a.m.-Canadian Press, Dean Beeby
- 11:00 a.m.-NDP Caucus, Kevin Deveaux, MLA
- 1:30 p.m.-Ecology Action Center, Raymond Plourde
- 2:30 p.m.-Canadian Association of Journalists, Paul Schneiderereit

Appendix F

Application Comparison Table

FOIPOP Applications

Midway through the 2003 calendar year, government departments have received 355 FOIPOP applications which consisted of 3 Academia, 75 Company/Business, 28 Media, 17 Other, 57 Political, 173 Private Individuals, and 2 Public Interest. As compared to the first two quarters of 2002 and 2001 the number of applications has declined. The total number of applications received since January 1, 2001 is as follows:

Year	January 1- March 31	April 1- June 30	July 1 - September 30	October 1 - December 31	Total
2003	219	136			355
2002	364	231	235	165	995
2001	281	234	257	300	1072

The table below provides a comparison of who's been making FOIPOP applications since January 1, 2001.

	# of Requests	Company / Business	Media	Other	Political Party	Private Individual	Public Interest
Apr 1 - Jun 30 2003	136	36	9	6	5	79	1
Jan 1 - Mar 31 2003	219	39	19	14	52	94	1
Oct 1 - Dec 31 2002	165	9	19	9	44	78	6
Jul 1 - Sept 30 2002	235	19	13	5	43	152	3
Apr 1 - Jun 30 2002	231	18	17	18	52	120	6
Jan 1 - Mar 31 2002	364	14	56	12	137	133	12
Oct 1 - Dec 31 2001	300	34	24	22	82	128	10
Jul 1 - Sept 30 2001	257	19	31	12	62	123	10

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Appendix G
Recommendations

1. **The Application Fee remain at $25 but that fees be eliminated for the first two hours of processing time and for any subsequent review by the Review Officer. All other fees are to remain the same.**

2. **The *Act* be amended to permit Administrators to decline to process an application they deem to be repetitious or incomprehensible. The Administrator must advise the applicant of the decision, in writing, within 30 days of receipt of the application. The right of the applicant to have the decision reviewed by the Review Officer should remain.**

3. **The Review Office continue its current practice of flexibility in granting extensions of time for complex and multiple applications.**

4. **The Review Office be provided with sufficient support to freely offer mediation.**

5. **All staff of the Review Office be administered an oath of confidentiality.**

6. **A Section be added to the *Act* to prohibit the Review Officer and staff from disclosing any information that comes to their knowledge in the performance of their duties.**

7. **The Review Officer provide in each review full reasons for the decision.**

8. **The Review Officer be given the power, where there are reasonable grounds to believe a public body has not provided the Review Office with all responsive records, to investigate and audit the public body.**

9. **Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to clarify the notice provision. The amendment would provide that notice to a third party is mandatory if the records relevant to a FOIPOP application might affect the interests or invade the privacy of that third party except in cases where giving such notice would be impracticable.**

10. **Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add that failure of a third party to respond to a request for consent to release records be deemed a refusal to consent to the release of the records.**

11. **The Review Officer's mandate should include participation in public education to facilitate improved use of the legislation.**

12. **The *Act* specify the authority of the Review Officer to establish procedures regarding the review process and to provide such procedures to applicants, Administrators and third parties.**

13. **Section 39 of the *Act* be amended to specify the authority of the Review Officer to make recommendations on whether claims for exemption have been met, discretion was appropriately exercised (e.g. disclosure or fee waive decision) or other related matters.**

14. **Continuing education and upgrading be provided to all FOIPOP Administrators on a regular basis, utilizing conferences and educational programs across the country.**

15. **The government should attempt to incorporate best practices from other jurisdictions in its own educational programs.**

16. **Section 7(2)(c) be amended to include Sections 18 and 20. This would broaden the ability of a public body, when responding to an applicant, to neither confirm nor deny the existence of a record if issues of personal privacy or safety are involved.**

17. **A provision be added to the *Act* to give FOIPOP Administrators the ability to create a record in a format requested by the applicant if it would be reasonable to do so.**

18. **Section 9(1)(c) be amended to allow an extension for further consultation with another level of government listed in Section 12.**

19. **Section 9(1)(c) be amended to allow for time extensions to be granted in situations of multiple concurrent requests from a single source, on condition that the extension is first authorized by the Review Office.**

20. **Section 10 be amended to allow for transfers of FOIPOP requests between public bodies and municipalities.**

21. **The Government of Nova Scotia consider establishing a Committee to specifically review pertinent aspects of personal and business privacy once the federal legislation is implemented and provincial issues become more obvious.**

22. **The Government consider appointing a separate, independent arbitrator with authority to investigate privacy complaints outside the scope of the *FOIPOP Act.***

23. **Section 22(lA)(b) of the *Act* be amended to require notice be given to a third party corporation in the Province in the manner set out in Section 14 of the regulations.**

24. **A provision be added to the *Act* that exempts information used to determine eligibility for employment or promotion, provided a summary of the performance of an individual as a candidate is given to that individual if requested.**

25. **Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add a section to protect the rights of the survivors of a deceased person.**

26. **The *Freedom of Information and Protection of Privacy Act* be amended, adding a Section to provide the Executor of the estate - or the next of kin - the same right of access to the deceased's personal records that deceased would have if he were living.**

27. **Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add a section to protect the rights of a minor child.**

28. **The *Freedom of Information and Protection of Privacy Act* be amended, adding a Section to provide custodial parents or guardians the same right of access to the personal records of a minor child that the child would have at the age of majority.**

29. **The definition of "personal information" in Section 3(1) should be extended to cover an individual's fax number, e-mail address and computer hard drives.**

30. **Section 12 be revised to reflect that such records should be exempted, if they would reveal information provided, in confidence, from another government.**

31. **Section 25 (Right of Correction of Personal Information) be amended to specifically exclude the right of correction of personal or professional opinions, but require any contrary opinion to be placed on the file.**

32. **Section 19C be amended to include reappointment as a faculty member and appointment or reappointment as an academic administrator of a university.**

33. **The term "tenure" be defined in the Act to include appointments of an indefinite term.**

34. **Section 27 be amended by adding a provision which permits universities to disclose personal information where the information is necessary for the operation of shared programs, shared activities or shared resources.**

35. **The government complete its work on routine access to records and that routine access be implemented as quickly as possible.**

36. **That the access list be reviewed on a regular basis and updated.**

37. **Agencies, boards and commissions should adopt the routine access policy described above.**

38. **All departments, boards, commissions and agencies of the Government of Nova Scotia should fall within the scope of the *Act*.**

39. **The definition of "public body" should be expanded to include municipalities for purposes of Section 9, 10, and 27 of the *Act*.**

40. The *Act* be amended to require the Minister of Justice to provide an annual report on the *Freedom of Information and Protection of Privacy Act*. The report should be released within three months of the calendar year end.

41. Revise Section 9(2) to change "tell" the applicant to "notify the applicant in writing", or in an alternate format for persons with disabilities, where an extension is granted.

42. Revise Section 20(3)(i) to remove ".....and is to be used for mailing lists or solicitation purposes."

43. Revise Section 47 (1) by adding "uses" to "collects or discloses".

44. Response time for requests to change personal information should be consistent with the access process .

45. The time period during which an applicant may request a review should be limited to 60 days with the possibility of an extension to 90 days with the consent of the Review Officer.

46. Section 4 of the Freedom *of Information and Protection of Privacy Act* be amended to add that the *Act* does not apply to records relating to a prosecution if all proceedings have been completed if the records sought would not have been the subject to disclosure under the criminal law rules of disclosure during the proceeding.

47. A review of the *Freedom of Information and Protection of Privacy Act* should be undertaken within five years of receipt of this report by the Governor in Council.

Appendix H

Freedom of Information and Protection of Privacy Act

A copy of the *Freedom of Information and Protection of Privacy Act* can be found at the following URL address: http://www.gov.ns.ca/legislature/legc/statutes/freedom.htm

A copy of the *Freedom of Information and Protection of Privacy Regulations* can be found at the following URL address: http://www.gov.ns.ca/just/regulations/regs/foiregs.htm

A copy of the *Freedom of Information and Protection of Privacy Act* and the Regulations can be obtained by mail at:

FOIPOP Office
Department of Justice
5151 Terminal Road
PO Box 7
Halifax, NS B3J 2L6